

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 N. 5th STREET
KANSAS CITY, KANSAS 66101

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AGENCY-REGION VII
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In the Matter of)

DAVID BOX AND CONNIE BOX)
Joplin, Missouri)

Respondents)

Docket No. TSCA-07-2004-0013

CONSENT AGREEMENT AND FINAL ORDER

Introduction

Prior to the filing of a complaint in this matter, the parties have agreed to the settlement of an administrative cause of action for the assessment of civil penalties under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), in accordance with the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, found at 40 C.F.R. Part 22. Pursuant to 40 C.F.R. § 22.13(b), it is the intent of the parties to simultaneously commence and conclude this proceeding by the issuance of this Consent Agreement and Final Order.

The Complainant, by delegation from the Administrator of the United States Environmental Protection Agency (EPA), and the Regional Administrator, EPA, Region 7, is the Director, Air, RCRA, and Toxics Division, EPA, Region 7. The Respondents are David Box and Connie Box, 220 E. 33rd Street, Joplin, Missouri 64804.

COMPLAINANT'S ALLEGATIONS

Complainant has reason to believe that Respondents have violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. Part 745, Subpart F - Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property ("Disclosure Rule"), which was promulgated pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d. Specifically, Complainant alleges:

Allegations Pertaining to All Counts

1. David Box and Connie Box ("Respondents") are individual persons.
2. For all periods of time relevant to the violations alleged herein, David Box and Connie Box owned residential properties located at 110 N. Winfield, Joplin, Missouri; 212 N. Picher, Joplin, Missouri; 214 N. Picher, Joplin, Missouri; 1817 S. Wall Street, Joplin, Missouri; and 840 N. Campbell, Webb City, Missouri (the "Properties").
3. The Properties were constructed prior to 1978.
4. The Properties are "target housing" as defined by 40 C.F.R. § 745.103.
5. On or about May 7, 2003, Mr. Keith Thompson, an authorized representative of EPA, performed a Disclosure Rule inspection of Respondents at the Box Properties office, located at 3301 C N. Rangeline, Joplin, Missouri 64801.

Count I - Failure to Provide Pamphlet 110 N. Winfield Lease Agreement

The facts stated in Paragraphs 1 through 5 above, are herein restated and incorporated.

6. On or about January 30, 2002, Respondents entered into a lease agreement with Seth and Tina Short for the lease of the property located at 110 N. Winfield for residential use (the "110 N. Winfield Contract").

7. As a result of the 110 N. Winfield Contract, David Box and Connie Box became the “lessors,” and Seth and Tina Short became the “lessees,” as those terms are defined by 40 C.F.R. § 745.103.

8. Seth and Tina Short subsequently moved into the Property.

9. Pursuant to 40 C.F.R. § 745.107(a)(1), before the lessee is obligated under any contract to lease target housing, the lessor of target housing must provide the lessee with an EPA-approved lead hazard information pamphlet.

10. Respondents did not provide an EPA-approved lead hazard information pamphlet to Seth and Tina Short prior to being obligated under the 110 N. Winfield Contract.

11. Respondents’ failure to provide an EPA-approved lead hazard information pamphlet to Seth and Tina Short prior to being obligated under the 110 N. Winfield Contract is a violation of 40 C.F.R. § 745.107(a)(1) and Section 409 of TSCA.

Count II - Failure to Provide Pamphlet
212 N. Picher Lease Agreement

The facts stated in Paragraphs 1 through 5 above, are herein restated and incorporated.

12. On or about December 24, 2001, Respondents entered into a lease agreement with Jeffrey Wooldridge for the lease of the property located at 212 N. Picher for residential use (the “212 N. Picher Contract”).

13. As a result of the 212 N. Picher Contract, David Box and Connie Box became the “lessors,” and Jeffrey Wooldridge became the “lessee,” as those terms are defined by 40 C.F.R. § 745.103.

14. Jeffrey Wooldridge subsequently moved into the Property.

15. Pursuant to 40 C.F.R. § 745.107(a)(1), before the lessee is obligated under any contract to lease target housing, the lessor of target housing must provide the lessee with an EPA-approved lead hazard information pamphlet.

16. Respondents did not provide an EPA-approved lead hazard information pamphlet to Jeffrey Wooldridge prior to being obligated under the 212 N. Picher Contract.

17. Respondents' failure to provide an EPA-approved lead hazard information pamphlet to Jeffrey Wooldridge prior to being obligated under the 212 N. Picher Contract is a violation of 40 C.F.R. § 745.107(a)(1) and Section 409 of TSCA.

Count III - Failure to Provide Pamphlet
214 N. Picher Lease Agreement

The facts stated in Paragraphs 1 through 5 above, are herein restated and incorporated.

18. On or about June 8, 2002, Respondents entered into a lease agreement with Jessica Lowe and Christopher Paxton for the lease of the property located at 214 N. Picher for residential use (the "214 N. Picher Contract").

19. As a result of the 214 N. Picher Contract, David Box and Connie Box became the "lessors," and Jessica Lowe and Christopher Paxton became the "lessees," as those terms are defined by 40 C.F.R. § 745.103.

20. Jessica Lowe and Christopher Paxton subsequently moved into the Property.

21. Pursuant to 40 C.F.R. § 745.107(a)(1), before the lessee is obligated under any contract to lease target housing, the lessor of target housing must provide the lessee with an EPA-approved lead hazard information pamphlet.

22. Respondents did not provide an EPA-approved lead hazard information pamphlet to Jessica Lowe and Christopher Paxton prior to being obligated under the 214 N. Picher Contract.

23. Respondents' failure to provide an EPA-approved lead hazard information pamphlet to Jessica Lowe and Christopher Paxton prior to being obligated under the 214 N. Picher Contract is a violation of 40 C.F.R. § 745.107(a)(1) and Section 409 of TSCA.

Count IV - Failure to Provide Pamphlet
1817 S. Wall Lease Agreement

The facts stated in Paragraphs 1 through 5 above, are herein restated and incorporated.

24. On or about January 21, 2002, Respondents entered into a lease agreement with Clarissa Hurd and Joshua Larson for the lease of the property located at 1817 S. Wall for residential use (the "1817 S. Wall Contract").

25. As a result of the 1817 S. Wall Contract, David Box and Connie Box became the "lessors," and Clarissa Hurd and Joshua Larson became the "lessees," as those terms are defined by 40 C.F.R. § 745.103.

26. Clarissa Hurd and Joshua Larson subsequently moved into the Property.

27. Pursuant to 40 C.F.R. § 745.107(a)(1), before the lessee is obligated under any contract to lease target housing, the lessor of target housing must provide the lessee with an EPA-approved lead hazard information pamphlet.

28. Respondents did not provide an EPA-approved lead hazard information pamphlet to Clarissa Hurd and Joshua Larson prior to being obligated under the 1817 S. Wall Contract.

29. Respondents' failure to provide an EPA-approved lead hazard information to Clarissa Hurd and Joshua Larson prior to being obligated under the 1817 S. Wall Contract is a violation of 40 C.F.R. § 745.107(a)(1) and Section 409 of TSCA.

Count V - Failure to Provide Pamphlet
840 N. Campbell Lease Agreement

The facts stated in Paragraphs 1 through 5 above, are herein restated and incorporated.

30. On or about January 25, 2002, Respondents entered into a lease agreement with Hazel Banks for the lease of the property located at 840 N. Campbell for residential use (the "840 N. Campbell Contract").

31. As a result of the 840 N. Campbell Contract, David Box and Connie Box became the "lessors," and Hazel Banks became the "lessee," as those terms are defined by 40 C.F.R. § 745.103.

32. Hazel Banks subsequently moved into the Property.

33. Pursuant to 40 C.F.R. § 745.107(a)(1), before the lessee is obligated under any contract to lease target housing, the lessor of target housing must provide the lessee with an EPA-approved lead hazard information pamphlet.

34. Respondents did not provide an EPA-approved lead hazard information pamphlet to Hazel Banks prior to being obligated under the 840 N. Campbell Contract.

35. Respondents' failure to provide an EPA-approved lead hazard information pamphlet to Hazel Banks prior to being obligated under the 840 N. Campbell Contract is a violation of 40 C.F.R. § 745.107(a)(1) and Section 409 of TSCA.

CONSENT AGREEMENT

1. For the purposes of this proceeding, Respondents admit that Complainant has jurisdiction to bring this action pursuant to the statutory and regulatory provisions cited above, and neither admit nor deny Complainant's factual allegations above.

2. For purposes of this Consent Agreement, Respondents waive their right to contest Complainant's allegations above, and their right to appeal the Final Order accompanying this Consent Agreement.

3. Respondents and Complainant agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

4. Respondents certify by the signing of this Consent Agreement and Final Order that to the best of Respondents' knowledge, they are presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart F - Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property ("Disclosure Rule").

5. Respondents consent to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty in the amount of Two Thousand Two Hundred Dollars (\$2,200) to be paid within forty-five (45) days of the effective date of the Final Order.

6. Respondents understand that their failure to timely pay any portion of the mitigated civil penalty stated in Paragraph 5 above may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the rate determined by the Secretary of the Treasury (currently two percent (2%) per annum for the period January 1, 2003, through December 31, 2003) on the unpaid balance until such civil penalty and any accrued interest are paid in full. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

FINAL ORDER

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601 *et seq.*, and based upon the information set forth in the Consent Agreement accompanying this Final Order, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a mitigated civil penalty of Two Thousand Two Hundred Dollars (\$2,200) to be paid within forty-five (45) days of the effective date of the Final Order. Such payment shall identify the Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

EPA-Region 7
c/o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251.


2. A copy of the check must be sent simultaneously to each of the following:

Kathy Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101; and

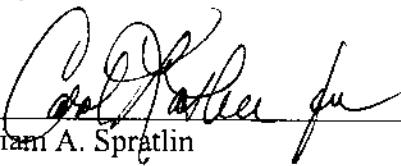
Deanna Smith
Office of Regional Counsel
U.S. Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101.

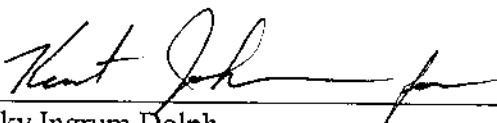
3. Respondent and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

RESPONDENTS:
DAVID BOX AND CONNIE BOX
JOPLIN, MISSOURI


Date 10/16/03 By 
Connie Box

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Date 10/29/03 By 
William A. Spratlin
Director
Air, RCRA, and Toxics Division

Date 11/3/03 By 
Becky Ingram Dolph
Deputy Regional Counsel

IT IS SO ORDERED. This Final Order shall become effective immediately.


Robert L. Patrick
Regional Judicial Officer

Date November 10, 2003

IN THE MATTER OF David Box and Connie Box Respondents
Docket No. TSCA-07-2004-0013

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

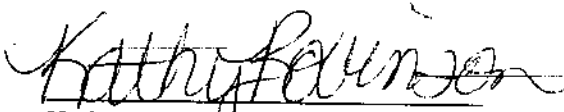
Copy hand delivered to
Attorney for Complainant:

Becky Ingrum Dolph
Deputy Regional Counsel
Regulatory Programs
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by U.S. Certified Mail,
Return Receipt Requested, to:

David Box and/or
Connie Box
220 E. 33rd Street
Joplin, Missouri 64804

Dated: 11/10/03


Kathy Robinson
Regional Hearing Clerk